No. 13940

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

JAMES ROLLAND FRANCY,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

REPLY BRIEF OF APPELLEE.

LAUGHLIN E. WATERS,
United States Attorney,

MANLEY J. BOWLER,
Asst. United States Attorney,
Chief of Criminal Division,

MANUEL L. REAL,
Asst. United States Attorney,

600 Federal Building,
Los Angeles 12, California,

Attorneys for United States of America, Appellee.

Parker & Company, Law Printers, Los Angeles. Phone MA 6-9171.

TOPICAL INDEX

TABLE OF AUTHORITIES CITED

Cases

Statutes

No. 13940

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

JAMES ROLLAND FRANCY,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

REPLY BRIEF OF APPELLEE.

I.
STATEMENT OF JURISDICTION.

Appellant was indicted by the Federal Grand Jury in and for the Southern District of California on November 19, 1952, under Section 462 of Title 50, App., United States Code.

On December 18, 1952, the appellant was arraigned, entered a plea of not guilty, and the case was set for trial on March 18, 1953.

On March 18, 1953, appellant was tried in the United States District Court for the Southern District of California before the Honorable William C. Mathes, sitting without a jury, and was found guilty as charged in the Indictment.

On April 7, 1953, appellant was sentenced to imprisonment for a period of four years and judgment was so entered. Appellant appeals from this judgment.

The District Court had jurisdiction of this cause of action under Section 462 of Title 50, App., United States Code, and Section 3231 of Title 18, United States Code.

This Court has jurisdiction of the appeal under Section 1291 of Title 28, United States Code.

II.
STATUTES INVOLVED.

The Indictment in this case was brought under Section 462 of Title 50, App., United States Code.

The Indictment charges a violation of Section 462 of Title 50, App., United States Code, which provides, in pertinent part:

> "(a) Any . . . person charged as herein provided with the duty of carrying out any of the provisions of this title [sections 451-470 of this Appendix], or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty . . . or who in any manner shall knowingly fail or neglect to perform such duty . . . or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under oath in the execution of this title [said sections], or rules, regulations, or directions made pursuant to this title [said section] . . . shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment . . ."

III.

STATEMENT OF THE CASE.

The Indictment charges as follows:

"Indictment

[U. S. C., Title 50, App., Section 462—Universal Military Training and Service Act.]

The grand jury charges:

Defendant James Rolland Francy, a male person within the class made subject to selective service under the Universal Military Training and Service Act, registered as required by said act and the regulations promulgated thereunder and thereafter became a registrant of Local Board No. 85, said board being then and there duly created and acting, under the Selective Service System established by said act, in Los Angeles County, California, in the Central Division of the Southern District of California; pursuant to said act and the regulations promulgated thereunder, the defendant was classified in Class I-A-O and was notified of said classification and a notice and order by said board was duly given to him to report for induction into the armed forces of the United States of America on July 10, 1952, in Los Angeles County, California, in the division and district aforesaid; and at said time and place the defendant did knowingly fail and neglect to perform a duty required of him under said act and the regulations promulgated thereunder in that he then and there knowingly failed and neglected to report for induction into the armed forces of the United States as so notified and ordered to do."

On December 8, 1952, appellant appeared for arraignment and plea, represented by J. B. Tietz, Esq., before the Honorable Ernest A. Tolin, United States District Judge,

and entered a plea of not guilty to the offense charged in the Indictment.

On March 18, 1953, the case was called for trial before the Honorable William C. Mathes, United States District Judge, sitting without a jury, and the appellant was found guilty as charged in the Indictment.

On April 7, 1953, appellant was sentenced to imprisonment for a period of four years in a penitentiary.

Appellant assigns as error the judgment of conviction on the following grounds:

A—The District Court erred in failing to grant the Motion for Judgment of Acquittal duly made at the close of all the evidence.

B—The District Court erred in convicting the appellant and in entering a judgment of guilt against him.

C—The District Court committed reversible error in refusing to hold that there was no basis in fact for the denial of the conscientious objector status, that the classification was arbitrary and capricious, and that appellant was denied his procedural rights to due process of law.

IV.

STATEMENT OF THE FACTS.

On May 8, 1950, James Rolland Francy registered with Local Board No. 85, Burbank, California. He was nineteen years of age at the time, having been born on November 5, 1931.

On January 4, 1951, James Rolland Francy filed with Local Board No. 85 SSS Form 100, Classification Questionnaire.

SSS Form 150, Special Form for Conscientious Objector, was furnished Francy, and he completed this form and filed it with Local Board No. 85. Francy claimed to be a conscientious objector because of his religious training and belief. He was classified I-A-O on January 25, 1951, and was mailed SSS Form 110, Notice of Classification.

On January 31, 1951, Francy requested a personal appearance before the Local Board and at the same time appealed his classification. A personal appearance before the Local Board was granted for February 8, 1951.

On February 8, 1951, Francy appeared before the Local Board. Francy was continued in Class I-A-O.

On March 14, 1951, the Appeal Board reviewed Francy's Selective Service file and determined that he was not entitled to a classification in either a class lower than IV-E or in Class IV-E.

On January 18, 1952, Francy was granted a hearing before the Hearing Officer at the Department of Justice.

On January 28, 1952, the Hearing Officer of the Department of Justice recommended that Francy be classified in Class I-A-O.

On March 31, 1952, Francy was classified I-A-O by the Appeal Board and he was advised of this action.

On June 20, 1952, SSS Form 252, Notice to Report for Induction, was mailed to Francy, ordering him to report for induction into the armed forces of the United States on July 10, 1952, at Los Angeles, California.

On July 10, 1952, Francy failed to report for induction, as ordered.

V.
ARGUMENT.

A. The Denial of the Claim of the Appellant for Classification in Class IV-E Was Not Arbitrary, Capricious and Without Basis in Fact.

The classification of registrants by Local Boards is provided by 50 U. S. C. A., App., Section 460, which provides in pertinent part:

> ". . .
>
> (b) The President is authorized—
>
> (3) To create and establish . . . local boards . . . Such local boards, . . . shall, under rules and regulations prescribed by the President, have the power . . . to hear and determine, . . . all questions or claims, with respect to inclusion or exemption or deferment from, training and service under this title (said sections), of all individuals within the jurisdiction of such local boards. The decisions of such local boards shall be final, except where an appeal is authorized and is taken in accordance with such rule and regulations as the President may prescribe . . ."

The limitations placed upon a trial court in the review of the classification given a Selective Service registrant were defined in the case of *Cox v. United States,* 332 U. S. 442. The Court in the *Cox* case, *supra,* says at page 448:

> "The scope of review to which petitioners are entitled, however, is limited; as we said in Estep v. United States, 327 U. S. 114, 122-3: 'The provision making the decisions of the local boards "final" means to us that Congress chose not to give administrative action under this Act the customary scope of judicial review which obtains under other statutes. It means

that the *courts are not to weigh the evidence* to determine whether the classification made by the local boards was justified. *The decisions of the local boards made in conformity with the regulations are final even though they maye be erroneous.* The question of jurisdiction of the local board is reached only if there is no basis in fact for the classification which it gave the registrant.' " (Emphasis added.)

Appellant contends that there is no contradictory evidence in the file disputing appellant's statements as to his conscientious objections or veracity, and that therefore, the action of the Board in classifying him in Class I-A-O was arbitrary, capricious and without basis in fact. A reading of the appellant's Selective Service file, would indicate the contrary.

Selective Service Regulations, Section 1622.6 (32 C. F. R. 1622.6) provided:

"1622.6 Class I-A-O: Conscientious Objector Available for Noncombatant Military Service Only.—

(a) In Class I-A-O shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to combatant training and service in the armed forces.

(b) Section 6(j) of Title I of the Selective Service Act of 1948, provides in part as follows: 'Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code.' "

Selective Service Regulations, Section 1622.20 (32 C. F. R. 1622.20) provided:

"1622.20 Class IV-E: Conscientious Objector Available for Civilian Work Contributing to the Maintenance of the National Health, Safety or In terest—

(a) In Class IV-E shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and to be conscientiously opposed to participation in war in any form and to be conscientiously opposed to participation in both combatant and noncombatant training and service in the armed forces.

(b) Section 6(j) of Title I of the Selective Service Act of 1948 provides in part as follows: 'Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code.' "

These sections of the Selective Service Regulations define in broad terms the qualifications necessary for classification as a conscientious objector in classifications I-A-O and IV-E. The application of these descriptions to particular registrants is a duty imposed upon the Local Boards. The Local Board was left to determine how and when a registrant claiming exemption from military service by reason of conscientious objection was to be qualified. The exercise of that discretion, even though it may have been erroneous, is final in the absence of arbitrary or capricious conduct on the part of the Local Board so classifying a registrant.

Cox v. United States, supra.

To aid the Local Board in its determination of the conscientious objector claims of registrants, the Selective Service System uses SSS Form 150, Special Form for Conscientious Objector. The questions and answers given thereto by a registrant are the basis of a classification by a Local Board within the broad terms of Selective Service Regulations, Section 1622.6 and 1622.20. The burden is upon the registrant to maintain and prove his claim within these categories. *Davis v. United States,* 203 F. 2d 853. This burden was not met by the appellant in the present case as evidenced by the classification given him by the Local Board.

A reading of the record in the instant case presents no circumstances which disclose any bias, prejudice, or unreasonable conduct on the part of the Local Board in the classification of the appellant. From the answers given in appellant's SSS Form 150, the local and appellate boards could reasonably find that the appellant was entitled to a classification in Class I-A-O but not in Class IV-E.

The Trial Court, therefore, properly denied appellant's Motion for Judgment of Acquittal.

B. Appellant Was Classified De Novo Following His Personal Appearance as Required by Section 1624.2 of the Selective Service Regulations.

The law presumes that the Local Board has acted within the scope of the regulations and has done its duty properly.

Koch v. United States, 150 F. 2d 762.

Neither the evidence presented by the appellant nor the evidence adduced from the Selective Service file introduced by the Government as its Exhibit 1, show any

facts which could overcome the presumption that the regular and normal procedures provided by the regulations had been followed by the Local Board.

Appellant was continued in Class I-A-O following his personal appearance before the Local Board. He was notified of that action. He was subsequently afforded an appeal and that appeal was heard. He cannot now be heard to complain that he was prejudiced by the action of the Local Board in continuing his classification of I-A-O.

Tyrrell v. United States, 200 F. 2d 8 (9th Cir.).

C. Appellant Was Given a Full and Fair Hearing Before the Hearing Officer of the Department of Justice.

Section 6(j) of the Universal Military Training and Service Act, 50 U. S. C. App., Section 456(j) (62 Stat. 609), provides for a hearing by the Department of Justice. The Supreme Court in the case of *United States v. Nugent,* 346 U. S. 1, has enunciated the principle that a registrant should be given a "fair résumé" of the contents of the investigative report of the Federal Bureau of Investigation when the registrant requested it pursuant to the procedure set up by the Attorney General. In the present case, the appellant requested the adverse information the Hearing Officer had in her possession. It was given to him pursuant to that request. The record does not indicate, nor was there any evidence presented at the trial, that adverse information in the possession of the Hearing Officer and considered by her was not given to the appellant. The testimony of the appellant himself would indicate that it was. [Tr. pp. 52-53.][1]

---

[1]"Tr." refers to "Transcript of Record."

Appellant was afforded due process in every stage of his classification. The Trial Court, therefore, properly denied his Motion for Judgment of Acquittal.

VI.
CONCLUSION.

Appellant was properly classified in Class I-A-O.

Appellant was classified *de novo* following a personal appearance, as required by the Selective Service Regulations.

Appellant was afforded all his rights under the Universal Military Training and Service Act.

It is, therefore, respectfully submitted that the judgment of conviction should be affirmed.

Respectfully submitted,

LAUGHLIN E. WATERS,
United States Attorney,

MANLEY J. BOWLER,
Asst. United States Attorney,
Chief of Criminal Division,

MANUEL L. REAL,
Asst. United States Attorney,

Attorneys for United States of America, Appellee.